

APR 08 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARVIN G. HOLLIS,

Plaintiff - Appellant,

v.

CARROL J. BARRIE, Department of  
Corrections, Registered Nurse; et al.

Defendants - Appellees.

No. 07-17165

D.C. No. CV-05-04225-THE

MEMORANDUM \*

Appeal from the United States District Court  
for the Northern District of California  
Thelton E. Henderson, District Judge, Presiding

Submitted March 18, 2009 \*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

California state prisoner Marvin G. Hollis appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that defendants

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

were deliberately indifferent to his foot condition by failing to provide orthotic shoe inserts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment. *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1064 (9th Cir. 2002) (en banc). We review for abuse of discretion a decision not to permit further discovery pursuant to Federal Rule of Civil Procedure 56(f). *Nicholas v. Wallenstein*, 266 F.3d 1083, 1089 (9th Cir. 2001). We affirm.

The district court properly granted summary judgment because Hollis failed to raise a genuine issue of material fact as to whether defendants intentionally failed to provide the orthotics. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (holding that negligence is insufficient to establish deliberate indifference).

The district court did not abuse its discretion in denying Hollis's motion for a continuance under Federal Rule of Civil Procedure 56(f) because Hollis did not identify what information he sought and how it would preclude summary judgment. *See Nicholas*, 266 F.3d at 1088-89 (holding that district court did not abuse its discretion in denying motion for continuance under Rule 56(f) where plaintiffs did not make clear what information was sought and how it would preclude summary judgment).

Hollis's remaining contentions are unavailing.

**AFFIRMED.**